

AMENDED IN ASSEMBLY MAY 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1075

Introduced by Assembly Member Alejo

February 27, 2015

An act to amend Sections 25186 and 25186.2 of, and to add Section 25189.4 to, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL’S DIGEST

AB 1075, as amended, Alejo. Hazardous waste: enforcement.

(1) The Hazardous Waste Control Law regulates the use and disposal of hazardous waste and authorizes the Department of Toxic Substances Control to deny, suspend, or revoke any permit, registration, or certificate applied for, or issued to, a person or entity if that person or entity engaged in specified activities in violation of the Hazardous Waste Control Law or other laws. ~~(PU RN20142004609)~~

~~This bill, if a person or entity violates or fails to comply with specified provisions after that person or entity has been found liable for, or been convicted of, two or more previous violations of or noncompliance with those same provisions during a 5-year period, bill would require the department to consider, except under specified circumstances, the violation 3 or more violations of, or noncompliance with, specified provisions for which a person or entity has been found liable or has been convicted, with respect to a single hazardous waste facility within a 5-year period, as compelling cause to deny, suspend, or revoke a permit, registration, or certificate applied for by, or issued to, that person.~~ *person or entity.*

(2) Existing law authorizes the department to temporarily suspend any permit, registration, or certificate prior to a hearing if the department

determines that action is necessary to prevent or mitigate an imminent and substantial danger to the public health or safety or the environment. *Existing law requires the department, upon receipt of a notice of defense to the accusation from the holder of the permit, registration, or certificate, to set the matter for hearing within 15 days and to hold the hearing as soon as possible, but not later than 30 days after receipt of the notice. Existing law requires the hearing to be held without delay and completed as soon as possible.*

This bill would instead authorize the department to temporarily suspend any permit, registration, or certificate prior to a hearing if the department determines that conditions may present an imminent and substantial endangerment to the public health or safety or the environment. *The bill would repeal the requirement that the hearing be held without delay and completed as soon as possible.*

(3) Existing law provides for the imposition of civil and criminal penalties upon persons who violate the requirements of the hazardous waste control law or take other actions with regard to the handling of hazardous waste.

This bill would impose, upon a person who is subject to the imposition of those civil or criminal penalties, an additional civil penalty of not less than \$5,000 or more than \$50,000 for each day of each violation, if the person has been found liable for, or been convicted of, 2 or more previous violations of certain of these hazardous waste-related provisions within any consecutive 60 months.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25186 of the Health and Safety Code is
2 amended to read:
3 25186. (a) The department may deny, suspend, or revoke any
4 permit, registration, or certificate applied for, or issued, pursuant
5 to this chapter in accordance with the procedures specified in
6 Sections 25186.1 and 25186.2, where the applicant or holder of
7 the permit, registration, or certificate, or in the case of a business
8 concern, any trustee, officer, director, partner, or any person
9 holding more than 5 percent of the equity in or debt liability of
10 that business concern, has engaged in any of the following:

(1) Any violation of, or noncompliance with, this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.8 (commencing with Section 25300), the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sec. ~~1801~~ 5101 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, ~~disposal~~ *disposal*, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(2) The aiding, abetting, or permitting of any violation of, or noncompliance with, this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.8 (commencing with Section 25300), the Porter-Cologne Water Quality Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sec. ~~1801~~ 5101 et seq.), the Comprehensive Environmental Response, ~~Compensation~~ *Compensation*, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, ~~disposal~~ *disposal*, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(3) Any violation of, or noncompliance with, any order issued by a state or local agency or by a hearing officer or a court relating to the generation, transportation, treatment, storage, recycling,

1 ~~disposal~~ *disposal*, or handling of a hazardous waste, as defined in
2 Section 25117, a hazardous substance, as defined in Section 25316,
3 or a hazardous material, as defined in Section 353 of the Vehicle
4 Code.

5 (4) Any misrepresentation or omission of a significant fact or
6 other required information in the application for the permit,
7 registration, or certificate, or in information subsequently reported
8 to the department or to a local officer or agency authorized to
9 enforce this chapter pursuant to subdivision (a) of Section 25180.

10 (5) (A) Activities resulting in any federal or state conviction
11 that are significantly related to the fitness of the applicant or holder
12 of the permit, registration, or certificate to perform the applicant's
13 duties or activities under the permit, registration, or certificate.

14 (B) For the purposes of this paragraph, "conviction" means a
15 plea or verdict of guilty or a conviction following a plea of nolo
16 contendere.

17 (C) An action that the department may take pursuant to this
18 paragraph relating to the denial, suspension, or revocation of a
19 permit, registration, or certificate may be based upon a conviction
20 for which any of the following has occurred:

- 21 (i) The time for appeal has elapsed.
22 (ii) The judgment of conviction has been affirmed on appeal.
23 (iii) Any order granting probation is made suspending the
24 imposition of sentence, notwithstanding a subsequent order
25 pursuant to Section 1203.4 of the Penal Code permitting that person
26 to withdraw the person's plea of guilty, and to enter a plea of not
27 guilty, or setting aside the verdict of guilty, or dismissing the
28 accusation, information, or indictment.

29 (6) Activities resulting in the revocation or suspension of a
30 license, permit, ~~registration~~ *registration*, or certificate held by the
31 applicant or holder of the permit, ~~registration~~ *registration*, or
32 certificate or, if the applicant or holder of the permit, registration,
33 or certificate is a business concern, by any trustee, officer, director,
34 partner, or any person holding more than 5 percent of the equity
35 in, or debt liability of that business concern relating to, the
36 generation, transportation, treatment, storage, recycling, disposal,
37 or handling of a hazardous waste, as defined in Section 25117, a
38 hazardous substance, as defined in Section 25316, or a hazardous
39 material, as defined in Section 353 of the Vehicle Code.

(b) (1) (A) For the purposes of this section, the following terms have the following meanings: *subdivision*, “*violation*” and “*noncompliance*” mean only the following:

(A) “*Repeating or recurring pattern of violation or noncompliance*” means a violation of, or noncompliance with a requirement specified in paragraph (1) or (2) of subdivision (a) by a person or entity that has previously been found to be liable for, or convicted of, two or more violations of, or noncompliance with, any of those requirements within a five-year period.

(B) “*Violation or noncompliance*” means any of the following:

(i) A violation or noncompliance that creates a significant threat of immediate and acute exposure to hazardous waste or hazardous waste constituents at a facility or offsite from a facility and that threat makes it reasonably necessary to take action to prevent, reduce, or mitigate that exposure.

(ii) A violation or noncompliance that includes, or results in, any of the following:

(I) Fire, explosion, or uncontrolled chemical reaction.

(II) Serious or acute injury or illness.

(III) Violation of any order issued by the department to the applicant or holder of the permit.

(IV) Federal or state felony conviction for violations of this chapter or its equivalent in the federal act or any requirement or regulation adopted pursuant to that authority relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste, as described in paragraph (6) of subdivision (a).

(B) “*Violation*” and “*noncompliance*” shall not include a minor violation as defined in Section 25117.6.

(2) Except as provided in paragraph (3), the department shall consider ~~a repeating or recurring pattern of violation or noncompliance~~ *three or more violations of, or noncompliance with, a requirement specified in paragraph (1) or (2) of subdivision (a) for which a person or entity has been found liable or has been convicted, with respect to a single facility within a five-year period,* as compelling cause to deny, suspend, or revoke the permit, registration, or certificate.

(3) This subdivision does not apply to a third violation or noncompliance if the department finds that extraordinary circumstances exist, including that a denial, suspension, or

1 revocation would endanger the public health or safety or the
2 environment.

3 (4) This subdivision does not limit or modify the department's
4 authority to deny, suspend, or revoke any permit, registration, or
5 certificate pursuant to subdivision (a) or any other law.

6 SEC. 2. Section 25186.2 of the Health and Safety Code is
7 amended to read:

8 25186.2. The department may temporarily suspend any permit,
9 ~~registration~~ *registration*, or certificate issued pursuant to this
10 chapter prior to any hearing if the department determines that
11 conditions may present an imminent and substantial endangerment
12 to the public health or safety or the environment. In making this
13 determination, the department may rely on any information,
14 including, but not limited to, an actual, threatened, or potential
15 harm to the public health or safety, or the environment, a release
16 or threat of a release, or a human health or ecological risk
17 assessment. The department shall notify the holder of the permit,
18 registration, or certificate of the temporary suspension and the
19 effective date thereof and at the same time shall serve the person
20 with an accusation. Upon receipt by the department of a notice of
21 defense to the accusation from the holder of the permit, registration,
22 or certificate, the department shall, within 15 days, set the matter
23 for a hearing, which shall be held as soon as possible, but not later
24 than 30 days after receipt of the notice. ~~The hearing shall be held~~
25 ~~without delay and completed as soon as possible.~~ The temporary
26 suspension shall remain in effect until the hearing is completed
27 and the department has made a final determination on the merits,
28 which shall be made within 60 days after the completion of the
29 hearing. If the determination is not transmitted within this period,
30 the temporary suspension shall be of no further effect.

31 SEC. 3. Section 25189.4 is added to the Health and Safety
32 Code, to read:

33 25189.4. (a) In addition to any penalty imposed under any
34 other law, a person who is subject to the imposition of civil or
35 criminal penalties pursuant to the provisions specified in
36 subdivision (b) shall also be subject to an additional civil penalty
37 of not less than five thousand dollars (\$5,000) or more than fifty
38 thousand dollars (\$50,000) for each day of each violation, if the
39 person has been found liable for, or has been convicted of, two or
40 more previous violations subject to the penalties specified in

1 subdivision (b) and those violations or convictions occurred within
2 any consecutive 60 months.
3 (b) The additional liability specified in subdivision (a) shall
4 apply to a penalty imposed pursuant to, or a conviction under,
5 paragraph (2) of subdivision (g) of Section 25187.8, or Section
6 25189, 25189.2, 25189.3, 25189.5, 25189.6, or 25189.7.

O